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IN THE

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1974

No. 74-1396

MICHELIN TIRE CORPORATION,
Petitioner,

vs.

W. L. WAGES, Tax Commissioner, et al.,
Respondents.

On Writ of Certiorari to the Supreme Court of Georgia

BRIEF FOR THE PETITIONER

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TABLE OF CONTENTS

	Page
Opinion below	1
Jurisdiction	2
Question Presented	2
Constitutional provision involved	2
Statement of the case	2
Summary of argument	5
Argument	7
A. Under the "Original Form or Package" Doctrine Which Has Long Been Established by Decisions of This Court, the Imported Tires, Which Are Held by Michelin, in Its Warehouse, in the "Original Form" in Which Such Tires Were Imported, Are Immune From Local Taxation	7
B. The Imported Tires Flow Out From Michelin's Warehouse to Franchised Tire Dealers Scattered Throughout Six States, and Therefore, While in Such Warehouse, Are Still in the Flow of Import Distribution, and Are Still Imports	9
C. By Payment of the 4% Duty to the United States, Michelin Acquired the Right to Sell the Imported Tires, as Well as to Bring Them Into the Country, Without Becoming Subject to Local Taxation	11
D. Stacking Unpackaged Imported Tires by Size and Style in Michelin's Warehouse Does Not Change the "Original Form" in Which Each Tire Is Imported,	

and Cannot Reasonably Be Considered as Indicating That Such Tires Have Completed Their Import Journey or That Michelin Is Selling Such Goods for Local Consumption at the Point of Final Destination 13

E. The "Invisible" Package Argument Disregards and Ignores the "Original Form" Portion of the "Original Form or Package" Doctrine, Is Unrealistic, and Should Be Rejected 15

F. The Immunity of Imports From Local Taxation Includes Immunity From Local Ad Valorem Property Taxation 17

G. The Sea Van Trailers in Which Some of the Imported Tires and Tubes Are Shipped Are Vehicles of Transportation and Not "Original Packages" 18

Conclusion 20

TABLE OF AUTHORITIES

Cases

American Mannex Corp. v. Cronvich, La. (1968), 207 So.2d 778 15

Anglo-Chilean Nitrate Sales Corp. v. Alabama, 288 U.S. 218 (1933) 7

Austin v. Tennessee, 179 U.S. 343 (1900) 15

Brown v. Maryland, 12 Wheat. 419 (1827) 5, 7, 8, 9, 11, 12, 13, 16, 18, 19

Citroen Cars Corporation v. City of New York, 30 N.Y.2d 300 (1972), 283 N.E.2d 758 8

Columbus Steel Supply Co. v. Kosydar, 38 Ohio St.2d 258 (1974), 313 N.E.2d 389 15

Department of Revenue v. Beam Distilling Co., 377 U.S. 341 (1964) 8, 17

Florida Greenheart Corporation v. Gautier, Fla. (1965), 172 So.2d 589, cert den 382 U.S. 825 .....8, 13

Hooven and Allison Company v. Evatt, 324 U.S. 652 (1945) 7

Low v. Austin, 13 Wall. 29 (1872) 17, 18

May v. New Orleans, 178 U.S. 496 (1900) 12

Michigan State Tax Commission v. Garment Corporation of America, 32 Mich. App. 715 (1971), 189 N.W.2d 72, cert den 404 U.S. 992 19

Richfield Oil Corporation v. State Board of Equalization, 329 U.S. 69 (1946) 17

Standard-Triumph Motor Company, Inc. v. City of Houston, 220 F. Supp. 732 (S.D. Tex. 1963), judgment vacated on jurisdictional grounds, 347 F.2d 194, cert den 382 U.S. 974 10

E. J. Stanton & Sons v. Los Angeles County, Cal. App. (1947), 177 P.2d 804, cert den 322 U.S. 766 15

Wilson v. County of Wake, N.C. App. (1973), 199 S.E.2d 665 .....9, 13

Youngstown Sheet and Tube Company v. Bowers, 358 U.S. 534 (1959) 7, 8, 9, 10, 11, 12

Constitutional Provision

Article I, Section 10, Clause 2, of the Constitution of the United States 2

Miscellaneous

2 Farrand, Records of the Federal Convention (1911), 441, 442 10

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OPINION BELOW

The opinion of the Supreme Court of Georgia is reported at 233 Ga. 712, 214 S.E.2d 349. Such opinion, and the order of the Supreme Court of Georgia denying the motion for rehearing which was filed by Michelin Tire Corporation (hereinafter "Michelin"), are printed at pages A-6 through A-19 of the Appendix to Michelin's Petition for a Writ of Certiorari.

JURISDICTION

The opinion of the Supreme Court of Georiga was rendered on February 4, 1975, and became final, for purposes of review by this Court, when the Supreme Court of Georgia denied Michelin's timely motion for rehearing on February 18, 1975. Michelin's Petition for a Writ of Certiorari was filed May 7, 1975 and was granted June 23, 1975. The jurisdiction of this Court is invoked under 28 U.S.C. Section 1257(3).

QUESTION PRESENTED

Whether tires imported by Michelin without packaging, and held for sale by Michelin in its wholesale distribution warehouse, in the original form in which such tires were imported, are immune under the Import Clause of the Federal Constitution from local ad valorem property taxes.

CONSTITUTIONAL PROVISION INVOLVED

The constitutional provision involved is the Import Clause (Article I, Section 10, Clause 2) of the Constitution of the United States, which states in part: "No State shall, without the consent of Congress, lay any Imposts or Duties on Imports or Exports, except what may be absolutely necessary for executing its Inspection Laws; . . ."

STATEMENT OF THE CASE

Michelin filed in the Superior Court of Gwinnett County, Georgia, this action seeking to enjoin the tax officials of that County (hereinafter "tax officials") from assessing and collecting Gwinnett County ad valorem property taxes on inventories of imported tires and tubes in Michelin's Gwinnett County warehouse. (A. 1-13).

In its original complaint, Michelin contended that such taxation is prohibited by the Import Clause of the Federal Constitution. (A. 4).

The case was tried in the Superior Court of Gwinnett County, and such Court rendered its decision in favor of Michelin. (The opinion and judgment of such Court are printed at pages A-1 through A-5 of the Appendix to Michelin's Petition for a Writ of Certiorari).

The tax officials appealed to the Supreme Court of Georgia, which upheld the immunity from tax with respect to imported tubes held in Michelin's Gwinnett County warehouse in the original packages in which imported, but denied immunity from tax with respect to tires imported without packaging, notwithstanding the fact that such tires were held by Michelin in its Gwinnett County warehouse in the original form in which they were imported. (The opinion and judgment of the Supreme Court of Georgia are printed at pages A-6 through A-18 of the Appendix to Michelin's Petition for a Writ of Certiorari).

Michelin, a New York corporation, is an importer and wholesale distributor of automobile and truck tires and tubes manufactured outside of the United States. (A. 26, 29, 53-54).

On all of such imported tires and tubes, Michelin has paid to the United States a 4% import duty. (A. 26-27).

No sales of such imported tires and tubes are made by Michelin except to franchised dealers. (A. 53-54). None of such imported tires or tubes is sold by Michelin to retail customers. (A. 53-54).

As a part of its business, Michelin operates a wholesale distribution warehouse located in Gwinnett County, Georgia. (A. 26, 29, 53-54).

Tires and tubes imported by Michelin from abroad flow into such Gwinnett County warehouse, and flow out from such Gwinnett County warehouse to some 250 to 300 franchised tire dealers scattered throughout six states. (A. 26, 29, 53-54).

All of the imported tires are imported by Michelin without packaging. (A. 31, 34). All of such unpackaged imported tires are held by Michelin in its Gwinnett County warehouse in the original form in which they were imported, and none of such tires are altered or modified in any way from the original form in which they were imported. (A. 34-35). Each imported tire bears a separate serial number which distinguishes it from any other tire. (A. 31).

While awaiting shipment or delivery to franchised tire dealers, the imported tires are segregated by size and style, and are stacked with other imported tires of the same size and style, in Michelin's wholesale distribution warehouse. (A. 29, 34-35, 46-47). Shipments and deliveries of such imported tires to franchised tire dealers, from such warehouse, average somewhere around 4,000 to 5,000 pounds of tires per shipment or delivery. (A. 53-54). The only tires in the warehouse are imported tires. (A. 55).

In its complaint, as amended, Michelin showed that it was not contesting, and had paid, the amount of Gwinnett County ad valorem property taxes due with respect to a small amount of passenger tubes located in Michelin's Gwinnett County warehouse which were partly (a) passenger tubes made in the United States, and partly (b) imported passenger tubes as to which the original package shipping carton in which such passenger tubes were imported had been broken by Michelin. (A. 10-11, 19-20). The passenger tubes referred to in the preceding sentence were kept separate from, and were not commingled with, the imported tires and tubes as to which Michelin claims immunity from local taxation. (A. 35-39).

Most of the imported tubes in the warehouse were still in the original package shipping carton in which such tubes were imported. (A. 28, 35-36). The Supreme Court of Georgia held that such tubes are immune from Gwinnett County ad valorem property taxation. (Page A-18 of Appendix to Michelin's Petition for a Writ of Certiorari). The tax officials did not file a Cross Petition for a Writ of Certiorari with respect to such holding.

The Supreme Court of Georgia based its decision with respect to the imported tires on the ground that such tires lost their status as imports when they were segregated by size and style, and stacked with other imported tires of the same size and style, in Michelin's Gwinnett County warehouse. (Pages A-17 and A-18 of Appendix to Michelin's Petition for a Writ of Certiorari).

The Supreme Court of Georgia recognized that the imported tires were held by Michelin in its Gwinnett County warehouse in the original form in which they were imported. In its opinion it said: "The individual tires are not treated or altered in any manner." (Page A-7 of Appendix to Michelin's Petition for a Writ of Certiorari).

SUMMARY OF ARGUMENT

The imported tires, which are held by Michelin in its warehouse in the "original form" in which they were imported, are immune from local taxation under the "original form or package" doctrine which is established by decisions of this Court beginning with *Brown v. Maryland*, 12 Wheat. 419 (1827).

Such imported tires, while in Michelin's warehouse, are still in the flow of import distribution, and are still imports, be-

cause such tires flow out from such warehouse to franchised tire dealers scattered throughout six states, and it is such franchised tire dealers who sell the tires for local consumption at the point of final destination.

By payment of the 4% import duty to the United States, Michelin acquired the right to sell such imported tires in the "original form" in which they were imported, without becoming subject to local taxation.

Segregating the imported tires by size and style, and stacking them in Michelin's warehouse with other imported tires of the same size and style, does not change the "original form" in which each tire was imported, and does not alter the fact that such tires flow out to franchised tire dealers scattered throughout six states and it is such franchised tire dealers who sell the tires for local consumption at the point of final destination.

The argument that each "entire shipment" of unpackaged imported goods is an "invisible" original package, which is broken when any single item is removed from the shipment, ignores and disregards the "original form" portion of the "original form or package" doctrine. Michelin's failure to keep each entire shipment of imported tires physically together in one place does not alter the fact that such tires flow out to franchised tire dealers scattered throughout six states and it is such franchised tire dealers who sell the tires for local consumption at the point of final destination.

The Supreme Court of Georgia correctly rejected the tax officials' argument that an ad valorem tax is not a tax on imports, and correctly rejected their argument that sea van trailers in which some of the tires and tubes were shipped were "original packages."

ARGUMENT

A. Under the "Original Form or Package" Doctrine Which Has Long Been Established by Decisions of This Court, the Imported Tires, Which Are Held by Michelin in Its Warehouse in the "Original Form" in Which Such Tires Were Imported, Are Immune From Local Taxation.

It has long been established by decisions of this Court that imported goods are immune from local taxation while held by the importer, in his warehouse, in the "original form or package" in which such goods were imported.

In *Brown v. Maryland*, 12 Wheat. 419 (1827), the Court, at 441-442, recognized that at some point "the thing imported" ceases to be an import, but went on to hold, in a passage which is quoted in almost every subsequent decision involving the Import Clause, that "while remaining the property of the importer, in his warehouse, in the *original form or package* in which it was imported, a tax upon it is too plainly a duty on imports to escape the prohibition in the constitution." (Emphasis supplied).

In *Hooven and Allison Company v. Evatt*, 324 U.S. 652 (1945), the Court, at 666, said "we now affirm" that: "Indeed, goods imported, while they remain in the hands of the importer, in the *form and shape* in which they were brought into the country, can in no just sense be regarded as a part of that mass of property in the state usually taxed for the support of state government." (Emphasis supplied).

In many other decisions extending over nearly 150 years, this Court has expressed its approval of the "original form or package" doctrine established by the landmark decision in *Brown v. Maryland*. Such decisions include *Anglo-Chilean Nitrate Sales Corp. v. Alabama*, 288 U.S. 218 (1933); *Youngs-*

town Sheet and Tube Company v. Bowers, 358 U.S. 534 (1959); and *Department of Revenue v. Beam Distilling Co.*, 377 U.S. 341 (1964).

In the passage often quoted from *Brown v. Maryland*, Chief Justice Marshall, at 12 Wheat. 441-442, said that if "the thing imported" is held by the importer, in his warehouse, in the "original form or package" in which it was imported, it is immune from local taxation.

The plain and natural meaning of such language is that if "the thing imported" was imported in a package, it must remain in the "original package" in which it was imported in order to be immune from local taxation, or, if "the thing imported" was imported without packaging, it must remain in the "original form" in which it was imported in order to be immune from local taxation.

In *Florida Greenheart Corporation v. Gautier*, Fla. (1965), 172 So.2d 589, cert. den. 382 U.S. 825, the Supreme Court of Florida held that lumber imported without packaging was immune from local taxation where held for sale by the importer in the "original form" in which imported. The Florida Court, at 591-592, after referring to the term "original package," said: "Where this expression has been used in the cases, *it has been used in juxtaposition with the words 'original form.'* This was the language used more than 100 years ago in the early case of *Brown v. State of Maryland* by Justice Marshall, 12 Wheat. 419, 25 U.S. 419, 6 L. Ed. 678. The cases since have held that the exemption attaches to the sale *in the original form or in the original package.*" (Emphasis supplied).

In *Citreon Cars Corporation v. City of New York*, 30 N.Y. 2d 300 (1972), 382 N.E.2d 758, the Court of Appeals of New York held that an automobile, imported without packaging, is immune under the Import Clause of the Federal Constitution from local taxation so long as owned and held for sale by the importer, where no substantial physical change has

been made in such automobile from the form in which it was imported. In the Court's opinion, after discussing *Brown v. Maryland*, Judge Breitel, at 30 N.Y.2d 305, said: "At least, two points were made clear by the *Brown* decision. First, one who imports for sale has by payment of the customs duty acquired the right to sell the goods free from State taxation. Certainly this is true so long as the article remains in the importer's warehouse in the *form or package* in which it was imported." (Emphasis supplied).

In *Wilson v. County of Wake*, N.C. App. (1973), 199 S.E. 2d 665, the Court held that undercarriage parts for crawler-type vehicles, imported without packaging, and held by the importer for sale in the "original form or condition" in which they were imported, are immune under the Import Clause of the Federal Constitution from local ad valorem property taxation.

It is an undisputed fact that the imported tires were held by Michelin in the "original form" in which such tires were imported. (A. 34-35).

Under the "original form or package" doctrine, such "original form" imported tires were immune from local taxation.

The Supreme Court of Georgia does not discuss the "original form" portion of the "original form or package" doctrine. It simply disregards and ignores the words "original form", and in effect treats such words as having no meaning at all.

B. The Imported Tires Flow Out From Michelin's Warehouse to Franchised Tire Dealers Scattered Throughout Six States, and Therefore, While in Such Warehouse, Are Still in the Flow of Import Distribution, and Are Still Imports.

In *Youngstown Sheet and Tube Company v. Bowers*, 358 U.S. 534 (1959), the Court, at 546, held that goods imported

for use in manufacturing had ceased to be imports and had become subject to local taxation where the "importation journey definitely had ended" and the goods were irrevocably committed to use in manufacturing at the "point of final destination."

By contrast, the imported tires here in question flow out from Michelin's Gwinnett County warehouse to franchised tire dealers scattered throughout six states, and therefore cannot reasonably be considered, while in such warehouse, as having reached the point where their "importation journey definitely had ended" or as having come to rest at a "point of final destination."

In language which the Court quoted with approval in *Youngstown*, supra, at 540, footnote 6, the imported tires, while in the Gwinnett County warehouse, are "merely in transitu, and on their way to the distant cities, villages and country for which they are destined, and where they are expected to be used and consumed, and for the supply of which they were in truth imported."

In *Standard-Triumph Motor Company, Inc. v. City of Houston*, 220 F. Supp. 732 (S.D. Tex. 1963), judgment vacated on jurisdictional grounds, 347 F.2d 194, cert den 382 U.S. 974, the District Court correctly held that unpackaged imported automobiles were "still in transit", and were still imports, where "the importation of these vehicles was for the purpose of distributing them to dealers throughout a five state area where they would then be sold and operated." 220 F. Supp. 734.

One of the important reasons for the inclusion in the Federal Constitution of the Import Clause was the desire to prevent the seaboard states from levying taxes on goods flowing through to inland states. 2 Farrand, Records of the Federal Convention (1911), 441, 442. The purpose just referred to would be defeated by permitting Gwinnett County to impose an ad valorem property tax on the imported tires which flow through the Gwinnett County warehouse to franchised tire dealers scattered throughout six states.

C. By Payment of the 4% Duty to the United States, Michelin Acquired the Right to Sell the Imported Tires, as Well as to Bring Them Into the Country, Without Becoming Subject to Local Taxation.

In *Youngstown Sheet and Tube Company v. Bowers*, 358 U.S. 534 (1959), the Court, at 540, quoted with approval from *Brown v. Maryland* the statement that one who had imported goods for the purpose of selling them, had, "by payment of the duty to the United States, (acquired the) right to dispose of his merchandise, as well as to bring it into the country," and that the State could not tax it "while remaining the property of the importer, in his warehouse, in the original form or package in which it was imported."

On all of the imported tires, Michelin has paid a 4% import duty to the United States. (A. 26, 27).

Under the language from *Youngstown* quoted above, Michelin, by payment of such 4% import duty, acquired the right to sell the imported tires, as well as to bring them into the country, and a State cannot tax such imported tires while remaining the property of Michelin, in its warehouse, in the "original form or package" in which they were imported.

The tax officials are mistaken in their contention, which they claim is supported by this Court's decision in *Youngstown*, that Michelin, by offering the imported tires for sale, has put such tires to the use for which they were imported, with resulting loss of immunity from local taxation.

Youngstown involved goods brought into this country by an importer for its own use in manufacturing. The Court holds that such imported goods become taxable when they are used by the importer in manufacturing, in which event, as the Court noted, they have been put to the use for which they were imported. The Court further holds that the imported goods are being used

in manufacturing when they are required to be kept on hand to meet the current operational needs of the manufacturer who imported them.

With respect to the entirely different situation involving goods imported for the purpose of selling them, there is no suggestion in *Youngstown* that the importer would become taxable by reason of offering such imported goods for sale. On the contrary, the Court clearly recognizes, as shown above, that where goods are imported for the purpose of selling them, the importer acquires, by payment of the import duty to the United States, the right to sell the imported goods in the original form or package in which they were imported, as well as to bring them into the country, without becoming subject to local taxation.

May v. New Orleans, 178 U.S. 496 (1900), cited and relied upon by the tax officials, holds that where a shipping box, case or bale containing smaller packages of imported goods is broken by the importer, the breaking of such shipping box, case or bale results in loss of immunity from local taxation. The Court holds that the shipping boxes, cases or bales, and not the smaller packages contained therein, are the "original packages" for the purpose of applying the *Brown v. Maryland* doctrine. The decision does not hold or suggest, as mistakenly argued by the tax officials, that the offering for sale of imported goods, which are still in the "original form or package" in which they were imported, would result in loss of immunity from local taxation.

If, in addition to bearing the burden of the 4% import duty, Michelin were required to pay ad valorem property taxes to Gwinnett County, it would be at a severe disadvantage as compared with wholesale distributors of tires made in this country, who are not subject to such 4% import duty. It is therefore reasonable and proper that Michelin, by payment of such 4% import duty, acquires the right not only to bring the tires into the country but also the right to sell them in the original form in which they were imported, free of local taxation.

D. Stacking Unpackaged Imported Tires by Size and Style in Michelin's Warehouse Does Not Change the "Original Form" in Which Each Tire Is Imported, and Cannot Reasonably Be Considered as Indicating That Such Tires Have Completed Their Import Journey or That Michelin Is Selling Such Goods for Local Consumption at the Point of Final Destination.

As previously mentioned, the tires imported by Michelin without packaging are not treated or altered in any manner and remain in their "original form" while in the distribution warehouse. Given this fact, both logic and common sense rebel at the suggestion that the "original form" of a tire imported without packaging is somehow changed by the mere stacking of such a tire in a warehouse with other unpackaged imported tires of the same size and style.

Such an argument was rejected in the *Florida Greenheart* and *Wilson* decisions discussed under heading A above, wherein the courts of Florida and North Carolina correctly held that stacking unpackaged imports with other unpackaged imports of the same size and style does not result in the loss of immunity from local taxation, so long as each unpackaged article is kept in the "original form" in which it was imported.

This is precisely the situation revealed by the record in this case, and the holding of the Supreme Court of Georgia to the contrary is erroneous because it completely disregards, ignores and treats as being meaningless, the "original form" portion of the "original form or package" doctrine.

The Supreme Court of Georiga is likewise mistaken in suggesting that segregating and stacking the imported tires by size and style in Michelin's warehouse is an activity comparable to that of the "itinerant peddler" referred to in *Brown v. Maryland*.

(Page A-17 of Appendix to Michelin's Petition for a Writ of Certiorari). The itinerant peddler is assumed to have broken the "original packages" in which the goods were imported, whereas Michelin holds the imported tires in the "original form" in which they were imported. An itinerant peddler sells goods at retail, whereas Michelin sells the imported tires only at wholesale, in shipments or deliveries averaging around 4,000 to 5,000 pounds of tires per shipment or delivery. (A. 53-54). An itinerant peddler sells goods for local consumption at the point of final destination, whereas the imported tires flow out from Michelin's warehouse to franchised tire dealers scattered throughout six states, and it is such franchised tire dealers who sell the tires for local consumption at the point of final destination. (A. 53-54).

Michelin does not operate a retail tire store. It does not sell the imported tires for local consumption at the point of final destination. It is exclusively a wholesale distributor of such tires, and such tires flow out from its wholesale distribution warehouse, in wholesale size shipments or deliveries, to destinations scattered throughout six states. (A. 53-54).

Segregating the imported tires by size and style, and stacking them with other imported tires of the same size and style in Michelin's Gwinnett County wholesale distribution warehouse, neither changes the "original form" of such tires nor alters in any way the fact that such imported tires, while in such warehouse, have not completed their import journey; have not come to rest at a final destination in Gwinnett County; are not being sold by Michelin for local consumption at the point of final destination; are still in the flow of wholesale import distribution; and are still imports.

E. The "Invisible" Package Argument Disregards and Ignores the "Original Form" Portion of the "Original Form or Package" Doctrine, Is Unrealistic and Should Be Rejected.

In what is obviously an effort to avoid the impact of the "original form" portion of the "original form or package" doctrine established by decisions of this Court, the courts of several states have held that, where unpackaged imports are involved, each entire shipment of unpackaged imported goods should be considered as being an "invisible" original package, which is broken when any single item is removed from the shipment, even though all items contained in the shipment are still in the "original form" in which they were imported. *E. J. Stanton & Sons v. Los Angeles County*, Cal App. (1947), 177 P.2d 804, cert den 322 U.S. 766; *American Mannex Corp. v. Cronvich*, La. (1968), 207 So.2d 778; *Columbus Steel Supply Co. v. Kosydar*, 38 Ohio St.2d 258 (1974), 313 N.E.2d 389.

In *Stanton*, the court, at 177 P.2d 808, referred to the entire shipment as being an "invisible gossamer" package.

Each "entire shipment" of tires received by Michelin at its warehouse consists of around 23,000 to 25,000 pounds of tires. (A. 54). Under the state court decisions just referred to, each such shipment would be considered as being an "invisible gossamer" package containing around 11½ to 12½ tons of tires. We respectfully submit that such view is strained and farfetched that it disregards and ignores the "original form" portion of the "original form or package" doctrine, and that it does not provide any reasonable basis for deciding the issue of whether or not the imported tires, while held for sale by Michelin in its wholesale distribution warehouse, have completed their import journey and have ceased to be imports.

Austin v. Tennessee, 179 U.S. 343 (1900), cited and relied upon by the tax officials, involved paper packages of cigarettes,

each 3 inches in length and 1½ inches in width, which were shipped in a basket furnished by an express company. The Court holds that, if there is any "original package" in the shipment, it is the basket and not the small paper packages of cigarettes contained therein. The decision does not hold or suggest, as mistakenly argued by the tax officials, that the entire shipment of goods is an "original package".

In the instant case the tires are imported without packaging and there is no original package—visible or invisible. The fact that Michelin does not keep each entire shipment of imported tires physically together in one place in its Gwinnett County wholesale distribution warehouse does not and cannot create an original package where none exists. If it can, every shipment of goods imported without packaging is surrounded by a so-called "invisible gossamer" package which is broken when any single item is removed, and the "original form" portion of the "original form or package" doctrine is rendered absolutely meaningless.

Furthermore, the fact that Michelin does not keep each entire shipment of imported tires physically together in one place in the warehouse does not and cannot alter the fact that such tires, while in such warehouse, have not completed their import journey; have not come to rest at a final destination in Gwinnett County; are not being sold by Michelin for local consumption at the point of final destination; are still in the flow of import distribution; and are still imports.

Under these circumstances, we respectfully submit that the "invisible" package argument ignores the plain and unambiguous language of the *Brown v. Maryland* line of decisions, is totally unrealistic, and should be rejected.

F. The Immunity of Imports From Local Taxation Includes Immunity From Local Ad Valorem Property Taxation.

The Supreme Court of Georgia correctly rejected the tax officials' argument that an annual ad valorem tax is not a tax on imports within the meaning of the Import Clause of the Federal Constitution. (Page A-17 of Appendix to Michelin's Petition for a Writ of Certiorari).

The argument that a non-discriminatory property tax on imported goods is not prohibited by the Import Clause of the Federal Constitution was considered and rejected by the Court in *Low v. Austin* 13 Wall. 29 (1872). The Court, at 13 Wall. 34, held that: "Whilst retaining their character as imports, a tax upon them in any shape, is within the constitutional prohibition."

In *Richfield Oil Corporation v. State Board of Equalization*, 329 U.S. 69 (1946), the Court again rejected the contention that the Import-Export Cluase should be read as not prohibiting a non-discriminatory local tax. The Court, at 76, said: "It seems clear that we cannot write any such qualifications into the Import-Export Clause. It prohibits every State from laying 'any' tax on imports or exports without the consent of Congress. Only one exception is created—'except what may be absolutely necessary for executing its inspection laws.' The fact of a single exception suggests that no other qualification of the absolute prohibition was intended. It would entail a substantial revision of the Import-Export Clause to substitute for the prohibition against 'any' tax prohibition aginst 'any discriminatory' tax."

In *Department of Revenue v. Beam Distilling Co.*, 377 U.S. 341 (1964), the Court held that imported whisky was immune under the Import Clause from a Kentucky tax of 10¢ per proof gallon which, although an occupational or license tax in form, was held to be a tax on the imported whisky. The Court, at

343, said: "The tax here in question is clearly of a kind prohibited by the Export-Import Clause. *Brown v. Maryland*, 12 Wheat. 419, 6 L. Ed. 678. As this Court stated alomst a century ago in *Low v. Austin*, 13 Wall. 29, 20 L. Ed. 517, a case involving a California ad valorem tax on wine imported from France and stored in original cases in a San Francisco warehouse, 'the goods imported do not lose their character as imports, . . . until they have passed from the control of the importer or been broken up by him from their original cases. Whilst retaining their character as imports, a tax upon them, in any shape, is within the constitutional prohibition.'"

G. The Sea Van Trailers in Which Some of the Imported Tires and Tubes Are Shipped Are Vehicles of Transportation and Not "Original Packages."

The Supreme Court of Georgia correctly rejected the tax officials' argument that the sea van trailers are "original packages". (Page A-17 of Appendix to Michelin's Petition for a Writ of Certiorari).

The sea van trailers are vehicles of transportation, and cannot be considered as being "packages" without doing violence to the ordinary and everyday meaning of the word "package".

Such sea van trailers are close to 40 feet in length, and each sea van trailer is the trailer portion of a large tractor-trailer rig, with the wheels and chassis of the sea van trailer being removable so that the sea van trailers can be stacked one upon another in a ship. (A. 32-33, 43-44). Each sea van trailer carries around 11½ to 12½ tons of tires. (A. 54). All of the sea van trailers are owned by the shipping companies which transport the imported tires and tubes. (A. 27).

When a sea van trailer is attached to the wheels and chassis, and to a tractor, a casual observer would not observe any difference between such sea van tractor-trailer rig and the normal type of large tractor-trailer rig which does not have the sea van trailer feature of the wheels and chassis being removable to facilitate stacking in a ship. The fact that there is no observable difference between the two types of tractor-trailer rigs is shown by the photographs identified as Ex. P-3 (sea van trailers) and Ex. P-4 (ordinary trailers). (R. 155; A. 31-33).

In *Michigan State Tax Commission v. Garment Corporation of America*, 32 Mich. App. 715 (1971), 189 N.W.2d 72, cert. den. 404 U.S. 992, the Michigan Court rejected a contention that sea van trailers are "original packages" for the purpose of the Import Clause of the Federal Constitution, and said, at 189 N.W.2d 74: "There is no essential difference between these vans and vehicles which are normally used in over-the-road transportation of property; the only slight difference being that they are modified to permit transportation of the entire van by ship. It can only be concluded that the vans and trailers are, in fact, vehicles, or at least instruments of transportation, and the mere use of a new technology in shipping does not destroy the tax immunity of the property shipped."

Treating the vehicle of transportation as being an "original package" would wipe out completely all immunity of imported goods from local taxation because in every case the imported goods must necessarily be brought into this country in some vehicle of transportation.

Such a result cannot be reconciled with *Brown v. Maryland* and other decisions of this Court hereinabove cited and discussed.

CONCLUSION

For the reasons set forth above, it is respectfully urged that this Court should reverse that portion of the Supreme Court of Georgia's decision which holds the imported tires to be taxable, and should hold that such imported tires are immune from local taxation.

Respectfully submitted

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